

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Technical Standards for Determining)
 Eligibility For Satellite-Delivered)
 Network Signals Pursuant to the)
 Satellite Home Viewer Improvement Act)

ET Docket No. 00-90

RECEIVED
 JUN 27 2000
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

**Comments of Fox Television Stations, Inc.
 and Fox Broadcasting Company**

Fox Television Stations, Inc. ("FTS") and Fox Broadcasting Company ("FBC," and collectively with FTS, "Fox") respectfully submit these comments in response to the above-captioned *Notice of Inquiry* to determine whether the signal standard for determining eligibility under the Satellite Home Viewer Improvement Act of 1999 ("SHVIA")¹ to receive distant network television signals should be modified. Fox strongly endorses the continued use of the Grade B standard, which remains a very accurate basis for determining the eligibility of satellite subscribers to receive distant network signals.

The dual purposes of the SHVIA are to increase competition between the satellite and cable industries while preserving the existing free, over-the-air advertiser-supported broadcast system.² To protect that delicate balance so that satellite carriers must only import distant network signals to households that are truly unserved, Congress defined "unserved households" as households that cannot receive a signal of Grade B intensity, as currently defined,

¹ Pub. L. 106-113, § 1000(9), 113 Stat. 1501.

² CONF. REP. NO. 106-464, at 91-93 (1999).

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over the air from their local station. While incorporating the current Grade B standard into the statutory definition of "unserved household," Congress in the SHVIA also directed the Commission to evaluate the signal intensity standard and to recommend modifications to that standard, but only "if appropriate."³

Fox submits these comments to explain the technical and scientific reasons, as well as policy reasons, why a modification of the Grade B standard for purposes of determining distant signal eligibility is completely unnecessary and would introduce confusion into the current regulatory regime. Fox urges the Commission, in its report to Congress, to stand by the current Grade B standard, which for half a century viewers have accepted, on which the broadcast industry has relied, and upon which the Commission has built a regulatory framework.

I. THE COMMISSION SHOULD NOT RECOMMEND ANY CHANGES TO THE EXISTING PLANNING FACTORS.

In the *Notice of Inquiry*, the Commission seeks comment as to whether, in light of any technological developments or changes in viewer expectations, the planning factors on

³ Section 339(c)(1) provides:

(c) Eligibility for retransmission.

(1) Signal standard for satellite carrier purposes. For the purposes of identifying an unserved household under Section 119(d)(10) of title 17, United States Code, within 1 year after the date of enactment of the Satellite Home Viewer Improvement Act of 1999, the Commission shall conclude an inquiry to evaluate all possible standards and factors for determining eligibility for retransmissions of the signals of network stations, and, if appropriate—

(A) recommend modifications to the Grade B intensity standard for analog signals set forth in section 73.683(a) of its regulations (47 C.F.R. 73.683(a)), or recommend alternative standards or factors for purposes of determining such eligibility; and

(B) make a further recommendation relating to an appropriate standard for digital signals.

which the Grade B standard is based should be altered. Fox submits that in light of the dearth of support for altering a standard that has defined television stations' service areas for fifty years, there should be no change in the Grade B planning factors.

- A. Strong evidence demonstrates that receiver noise figures have improved dramatically over the years, while no evidence suggests that viewer expectations have changed.

The foundation of the Grade B standard is that it represents a field strength that will yield an acceptable picture.⁴ In this *Notice of Inquiry*, the Commission seeks empirical evidence that public expectations of picture quality have risen over the last 50 years, but states that no empirical data yet support the satellite industry's speculation of a purported change in viewer expectations.⁵ Absolutely no empirical evidence suggests that viewers' perception of an acceptable picture has changed since the initial TASO study that correlated signal strength with picture quality. Absent a scientifically valid study showing that viewer expectations of picture quality have changed significantly over the past 50 years, nothing justifies altering the Grade B standard.

The continued satisfaction of viewers' expectations for picture quality is due in large part to technological advances in television receivers over the past decades. Noise figures of television receivers have markedly improved since the analog television planning factors were adopted almost half a century ago. VHF noise figures improved more than 6 dB in the roughly

⁴ *Notice of Inquiry*, para. 3.

⁵ *Id.*, para. 14 & n.27 (stating that no current study documents a purported change in viewer expectations and that neither viewer study submitted by PrimeTime 24's consulting engineer "was conducted in accordance with the accepted standard for viewer studies").

twenty years since the original analog planning factors were set.⁶ This represents an increase of one full "TASO grade" in picture quality going from a 30 dB ("passable") to a 35.5 dB ("fine") carrier-to-noise ratio 90% of the time.

Developments in receiver quality have not only improved picture quality for sets receiving Grade B signals, but also have enabled reception of signals previously too weak to provide acceptable picture quality. If the Commission were to change this planning factor at all, it should *lower* the field strength values and expand the Grade B service areas given the improvement in receivers. Nonetheless, Fox maintains that the Commission should not recommend any change to the current standard, but should allow consumers to continue to benefit from equipment refinements.

B. In the absence of strong scientific evidence justifying alteration of the Grade B planning factors, the Commission should not recommend altering the current standard.

While the Commission seeks technical information that might justify altering the original service planning factors,⁷ Fox is not aware of any technical studies that would justify such a change. With respect to multipath interference, no practical methodology currently exists to measure multiple ghosts,⁸ and no data has been gathered measuring the subjective effects of multiple ghosts at radio frequencies. Likewise, Fox is not aware of any evidence that environ-

⁶ *A Review of the Technical Planning Factors for VHF Television Service*, Gary S. Kalagian, FCC/OST/RS 77-01, at Appendix C (1977), National Technical Information Service No. 266341.

⁷ *Notice of Inquiry*, para. 11.

⁸ *Id.*, para. 26.

mental noise, which primarily affects low-band VHF,⁹ has changed demonstrably since the original planning factors were adopted.

II. THE GRADE B STANDARD SHOULD ASSUME AN ANTENNA PROPERLY ORIENTED TOWARD THE DESIRED STATION.

The Commission seeks comment on the meaning of "stationary" antenna in the definition of "unserved household."¹⁰ Congress unequivocally incorporated the current Grade B standard into the statute, which assumes that the antenna is oriented toward the desired station.¹¹ The legislative history makes clear that Congress did not intend to change the current assumption that an antenna would be pointed toward an individual station's transmitter. For example, Representative Howard Coble, Chairman of the Subcommittee on Courts and Intellectual Property and original sponsor of the legislation, explained that Congress did not intend any change in the methods used to determine whether a household is unserved:

[T]he existing Satellite Home Viewer Act permits network station signals to be retransmitted only to a narrowly defined group of "unserved households," i.e., those located in places, almost always remote rural areas, in which over-the-air signals are simply too weak to be picked up with a *correctly oriented, properly functioning conventional rooftop antenna*. The definition of an "unserved household" continues to be the same as it is in the current statute, i.e., a household that cannot receive, through the use of a *properly working, stationary outdoor rooftop antenna that is pointed toward the transmitter*, a signal of at least Grade B intensity as defined in Section 73.683(a) of the FCC's rules.

. . . .

⁹ *Id.*, para. 23.

¹⁰ *Id.*, para. 18.

¹¹ *Id.*; See also *In re Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act*, Report and Order, CS Docket No. 98-201, para. 59 (1999).

I should briefly discuss the addition of the word “stationary” to the phrase “conventional outdoor rooftop receiving antenna” in Section 119(d)(10) of the Copyright Act....I want to stress that this one-word change to the Copyright Act does not require (or even permit) any change in the methods used by the courts to enforce the “unserved household” limitation of Section 119. The new language says only that the test is whether a “stationary” antenna can pick up a Grade B intensity signal; although some may have wished otherwise, it does not say that the antenna is to be improperly oriented (i.e., pointed away from the TV transmitter in question). To read the Act in that way would be extraordinarily hypocritical, since “stationary” satellite antennas themselves must be perfectly oriented to get any reception at all. In any event, the Act provides controlling guidance about antenna orientation in Section 119(a)(2)(B)(ii)(II) of the bill, which specifies that the FCC’s existing procedures (requiring correct orientation) be followed.... A contrary meaning would leave the Copyright Act with no fixed meaning at all, since while there is a single correct way to orient an antenna to receive a particular station (which is what the Act assumes), there are at least 359 wrong ways to do so as one moves in a circle away from the correct orientation.¹²

The word "stationary" must be read along with the word "conventional;" rooftop antennas are customarily installed to optimize their capacity. Just as the directional outdoor aerials mounted on satellite subscribers' rooftops are pointed to receive satellite retransmissions, rooftop antennas are aimed to receive the strongest signal over the air. Fox submits, therefore, that a "conventional, stationary, outdoor rooftop receiving antenna" referred to in the statutory definition of "unserved household" would be oriented to receive the strongest signal from each local television station in the local market.

III. TO CHANGE THE GRADE B SIGNAL INTENSITY STANDARD FOR A SPECIFIC PURPOSE COULD HAVE UNINTENDED COLLATERAL CONSEQUENCES.

Fox urges the Commission to consider the collateral consequences of creating inconsistent measures of adequate signal intensity that are used to determine television stations'

¹² 145 CONG. REC. 164, H12813, H12814 (daily ed. Nov. 18, 1999) (statement of Rep. Coble) (emphasis added); *see also* 145 CONG. REC. 165, S14991 (daily ed. Nov. 19, 1999) (statement of Sen. Hatch).

service areas. Commission regulations rely extensively on the Grade B signal intensity standard or contour for television stations. The Grade B standard is used in the broadcast multiple ownership rules, cable must-carry rules and is the basis for the Commission's new table of DTV allotments.¹³ Other regulations ensure that the Grade B service area does not receive interference from other radio services.¹⁴ To erode or enlarge the Grade B service area for purposes of the SHVIA, while maintaining a disparate contour for other purposes, could have unintended consequences.

To the extent the Commission changes the standard for purposes of the SHVIA, it should anticipate that it will receive calls to replace the Grade B standard for other regulations. Given that no bases have been demonstrated to change the standard, the Commission should not risk upsetting the regulatory balance. In the midst of the carefully crafted constellation of regulations, it would be completely inappropriate to alter the Grade B definition for a single purpose.

IV. CONCLUSION

Congress incorporated the Commission's current definition into the statutory definition of "unserved household" to ensure that it would take nothing short of a further act of Congress to change the signal intensity standard used for that purpose. Congress is relying on

¹³ 47 C.F.R. §§ 73.3555 (multiple ownership rules), 76.55 (must-carry), 73.622 (DTV table of allotments).

¹⁴ These radio services include mobile radio, Interactive Video and Data Service, non-commercial educational FM stations, Coast and Operational Fixed Stations, and FM stations and boosters. *See, e.g.*, 47 C.F.R. §§ 1.420, 73.525(e), 80.215, 80.559, 87.451, 90.307, 95.855.

the Commission's technical expertise and knowledge of the administrative framework to gather information about the Grade B standard. The Commission should not recommend any changes to the current Grade B standard absent valid, scientific, statistically significant evidence to support the necessity of such an overhaul of the current system. Fox urges the Commission, in its report to Congress, to reaffirm the validity of the Grade B standard as representing the signal strength that provides truly acceptable picture quality.

Respectfully submitted,

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Dated: June 27, 2000

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